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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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 TELEPHONE COMPANY - CABLE )  
 TELEVISION CROSS )  
 OWNERSHIP RULES )  
 SECTIONS 63.54 - 63.58 )  
 )  
 and )  
 )  
 Amendments of Parts 32, 26, 61 )  
 64, and 69 of the Commission's )  
 Rules to Establish and Implement )  
 Regulatory Procedures for Video )  
 Dialtone Service )  
 )

CC Docket No. 87-266

[RM-8221]

REQUEST FOR AN EXTENSION OF TIME  
TO FILE COMMENTS BY THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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December 15, 1994

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Regulatory Procedures for Video	)	
Dialtone Service	)	

**REQUEST FOR EXTENSION OF TIME  
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Pursuant to Sections 1.46 and 1.44 of the Federal Communication Commission's ("FCC" or "Commission") General Rules of Practice and Procedure, 47 C.F.R. Sections 1.46 and 1.44 (1994), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully requests that the Commission extend the time for filing comments in response to the FCC's "Memorandum Opinion and Order on Reconsideration and Third Notice of Proposed Rulemaking" released November 7, 1994 [FCC 94-269] in the above captioned proceeding. NARUC requests the FCC to extend the comment cycle in these proceedings an additional sixty-eight (68) days to March 31, 1994.

In support of this request, NARUC states the following:

## I.

The NARUC is a quasi-governmental nonprofit organization founded in 1889. The NARUC includes within its membership those governmental bodies of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, which engage in the regulation of carriers and utilities.

NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. More specifically, NARUC is composed of the State officials charged with the duty of regulating the telecommunications common carriers within their respective borders. As such, they have the obligation to assure the establishment of such telecommunications services and facilities as may be required by the public convenience and necessity, and the furnishing of service at rates that are just and reasonable. As discussed below, the FCC's proposed action in this docket will clearly impact upon this obligation.

## II.

On November 7, 1994, the FCC finally released the text of its order on reconsideration ("Order") and third further notice of proposed rulemaking ("FNPRM"). The Order, inter alia, responds directly to an earlier NARUC petition for reconsideration concerning both the need for separations reform and jurisdictional authority over video dialtone services.

The FNPRM asks for information and comment in three broad areas: (a) Mechanisms to address the technical and economic constraints on the provision and expansion of analog channel capacity; (b) Criteria for identifying areas in which the Commission's ban on LEC acquisition of cable facilities within the LEC's service area for purposes of providing video dialtone service should not apply; and (c) Whether the Commission should require LECs to provide preferential treatment for certain classes of commercial and noncommercial video programmers, and whether preferential treatment voluntarily provided by LECs to certain types of video programmers would be lawful.

### III.

The November 7, 1994 FNPRM set (i) December 16, 1994 as the date for interested persons to file initial comments, and (ii) January 17, 1991 as the final day to reply to those initial comments. Unfortunately, the FNPRM was released less than four days before NARUC members began meeting, on November 11, 1994, in anticipation of the November 14-17, 1994 Annual Convention. NARUC can only take action based upon resolutions. Due to the limited time available between the release of the order and the meeting, NARUC was unable to form a consensus position on many of the issues raised by the FCC's Order and FNPRM.

#### IV.

Clearly, in light of the Commission's determination to refer VDT issues to a Federal-State Joint Board pending a more generic review in a proposed broadband NOI, the existing opportunities for State input in to the FCC's VDT procedures takes on an increased significance. In recognition of that increased significance, NARUC did pass a formal resolution asking the FCC to extend the time for responses in this proceeding to March 31, 1995. [See Appendix A, infra.] As that resolution reiterates, many of the specific issues raised by the FNPRM are of particular interest to the States.

#### V.

For example, the FNPRM seeks comment on whether LECs seeking to provide video dialtone service should be required to show in their video dialtone applications that video programmers have available reasonable access to pole or conduit space at reasonable charges and without undue restrictions on the use of pole or conduit space. Section 224 of the Communications Act of 1934 gives states jurisdiction over the rates, terms and conditions of cable television system attachment to poles, ducts, conduits or right-of-way owned or controlled by a utility if the state has certified to the FCC that such attachments are regulated in a way which considers the interests of cable television subscribers as well as the interests of utility customers. Certain states have made such certifications and do presently have jurisdiction over cable system pole attachments.

Obviously, such states have a continuing interest in ensuring that control over pole attachments and conduit space is not used in an anti-competitive manner.

The FNPRM also seeks comments on whether the cross ownership prohibition should be amended so that LECs would be permitted to purchase cable facilities in markets that meet certain criteria. Again, States have an undeniable and compelling interest in ensuring that consumers are able to benefit from the provision of video services while not being unduly disadvantaged by their location or the potential inability of the market to support two wire-based multi-channel video delivery systems.

Finally, the Third FNPRM seeks comments on whether the FCC legally can, and should, mandate preferential video dialtone access or rates for certain classes of programmers, or whether to permit LECs voluntarily to provide preferential treatment to certain programmers such as noncommercial educational programmers. Clearly such a proposal affects and is related existing State initiatives addressing the issue of promoting telecommunications applications in education in various ways, including through the use of preferential rates.

## VI.

NARUC is holding its winter meetings during the last week of February, approximately 45 days after the deadline for filing reply comments.

Because of the undeniably importance of the issues presented by the NOTICE to NARUC's members, discussion/issue papers concerning video dialtone have been circulating among NARUC's Communication Committee since before the November 6 order issued. Indeed, during the November Annual meeting, NARUC held a Video Dial Tone workshop which demonstrated that industry providers are using, or proposing to use, various inconsistent methodologies to jurisdictionally allocate video dialtone costs. Moreover, the NARUC Subcommittee on Communications has initiated a process to comprehensively address the issues raised in the FNPRM between now and the Winter Meetings in February 1995 and will be prepared to present a policy position for consideration by the Committee on Communications at that time. Thus, NARUC is unable to respond to the FNPRM until it can achieve a formal consensus position at its winter meetings.

## VII.

NARUC has been an active participant at every stage of these proceedings. The FCC's proposed action (i) clearly raises issues of paramount concern to NARUC's state commission membership and (ii) will likely impact upon these members' ability to adhere to their respective mandates to serve the public interest. No other participant's filed initial and reply comments can adequately represent the viewpoint of NARUC and its membership. This viewpoint is necessary to fully illuminate the issues raised by the FCC's proposal and assure a complete record upon which to base a decision.

Hence, granting the requested extension will serve the public interest by ensuring NARUC's continued full participation.

VIII.

Moreover, no party can be significantly prejudiced by the delay. Because NARUC's winter meeting begins closely on the heels of the close of the originally proposed filing dates, only a short extension is necessary to assure NARUC's full participation.

IX.

Accordingly, because of the critical importance of the issues raised by the FCC's NOTICE to NARUC's membership, the relatively close proximity of NARUC's winter meeting to the final deadline already posed, and NARUC's inability to formulate a consensus position on those critical issues until its winter meeting, NARUC respectfully requests that the FCC grant a sixty-eight (68) day extension of time to file reply comments in the above-captioned proceeding.

Respectfully submitted,

  
PAUL ROGERS  
General Counsel

  
CHARLES D. GRAY  
Assistant General Counsel

  
JAMES BRADFORD RAMSAY  
Deputy Assistant General Counsel

National Association of  
Regulatory Utility Commissioners

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December 15, 1994



**APPENDIX A**  
**Resolution Concerning the FCC's Third Further Notice of Proposed Rulemaking in Docket No. 87-266 and Forthcoming Notice of Inquiry on New Technologies (Including Video Dialtone)**

**WHEREAS,** The Federal Communications Commission's (FCC) Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking (FNPRM), Docket No. 87-266, released on November 7, 1994, seeks comments on several outstanding issues related to the implementation of video dialtone; and,

**WHEREAS,** The Memorandum Opinion and Order also calls for an inquiry proceeding to focus on the implications for the jurisdictional separations process of the introduction of new technologies, including video dialtone, into local exchange carrier networks; and

**WHEREAS,** The National Association of Regulatory Utility Commissioners (NARUC) Communications Subcommittee has conducted a survey of state regulators views on video dialtone service, held a workshop on video dialtone cost allocations and reviewed parties' positions; and

**WHEREAS,** The workshop demonstrated that industry providers are using, or proposing to use, various inconsistent methodologies to jurisdictionally allocate video dialtone costs; and

**WHEREAS,** Uniform national technical, accounting and cost recovery standards for interconnection must be in place and enforced if there is to be any possibility of multiple providers of broadband services in a competitive marketplace; and

**WHEREAS,** The cost of deploying a nationwide broadband communications network should be allocated between the federal and state jurisdiction, as well as between regulated and non-regulated services, in an equitable and efficient manner; and

**WHEREAS,** The determination of whether intrastate investment by local exchange carriers is necessary and prudent properly resides with state Commissions, who must ensure that subscribers of basic services do not unnecessarily underwrite the costs of non-basic facilities; and

**WHEREAS,** The major portion of the plant of telephone companies is used commonly for both intrastate and interstate services, and a major portion of the telephone company's expense is incurred in the joint rendition of these services; and

**WHEREAS,** The Federal Pole Attachment Act (Sec. 224 of the Communications Act of 1934) gives a state jurisdiction over the rates, terms and conditions of cable television system attachment to poles, ducts, conduits or right-of-way owned or controlled by a utility if the state has certified to the FCC that such attachments are regulated in a way which considers the interests

of cable television subscribers as well as the interests of utility customers; and

**WHEREAS**, Certain states have made such certifications and do presently have jurisdiction over cable system pole attachments; and

**WHEREAS**, The Third FNPRM seeks comment on whether LECs seeking to provide video dialtone service should be required to show in their video dialtone applications that video programmers have available reasonable access to pole or conduit space at reasonable charges and without undue restrictions on the use of pole or conduit space;

**WHEREAS**, The states have a continuing interest in ensuring that control over pole attachments and conduit space is not used in an anti-competitive manner; and

**WHEREAS**, The FCC currently prohibits the acquisition by telephone companies of cable facilities in their service area for provision of video dialtone; and

**WHEREAS**, The FCC has recognized that some markets may be incapable of supporting two video delivery systems and that in these markets the prohibition may serve little useful purpose and that the prohibition in these markets would therefore effectively preclude the establishment of video dialtone service, thereby denying consumers the benefits of a common carrier video transmission facility capable of serving multiple video programmers; and

**WHEREAS**, The Third FNPRM seeks comments on whether the prohibition should be amended so that LECs would be permitted to purchase cable facilities in markets that meet certain criteria; and

**WHEREAS**, The states have a compelling interest in ensuring that consumers are able to benefit from the provision of video services while not being unduly disadvantaged by their location or the potential inability of the market to support two wire-based multi-channel video delivery systems; and

**WHEREAS**, The Third FNPRM seeks comments on whether the FCC legally can, and should, mandate preferential video dialtone access or rates for certain classes of programmers, or whether to permit LECs voluntarily to provide preferential treatment to certain programmers such as noncommercial educational programmers; and

**WHEREAS**, Some states have already addressed the issue of promoting telecommunications applications in education in various ways, including through the use of preferential rates; and

**WHEREAS**, The Subcommittee on Communications has initiated a process to comprehensively address the issues raised in the Third FNPRM between now and the Winter Meetings in February 1995 and will be prepared to present a policy position for consideration by the Committee on Communications; now, therefore, be it

**RESOLVED,** That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 106th Annual Meeting in Reno, Nevada, reiterates its recommendation that the FCC refer the jurisdictional allocation of video dialtone costs to the Federal State Joint Board for consideration and recommendation; and be it further,

**RESOLVED,** That the FCC, through the Federal State Joint Board process, create jurisdictional separations and cost allocation procedures for VDT to be consistently applied by the industry; and be it further,

**RESOLVED,** That the NARUC intends to fully address the jurisdictional separations issues regarding video dialtone service and other new technologies in the forthcoming Notice of Inquiry; and be it further,

**RESOLVED,** That the NARUC General Counsel be directed to request a limited extension of time until March 31, 1995 for the submission of comments in CC Docket No. 87-266 to address all of the issues raised in the Third FNPRM; and be it further,

**RESOLVED,** That the NARUC General Counsel be directed to provide comments in the FCC proceeding to effectuate this resolution.

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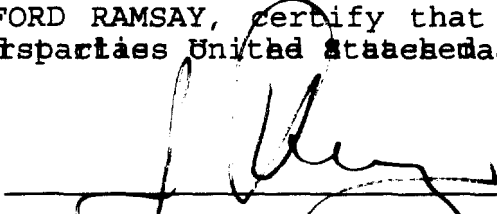
Sponsored by the Committee on Communications  
Adopted November 16, 1994

In the Matter of  
**TELEPHONE COMPANY-CABLE TELEVISION CROSS-OWNERSHIP RULES**  
**SECTIONS 63.54 - 63.58**

CC Docket No. 87-226

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing  
was sent by ~~airmail~~ ~~United States~~ ~~Express~~ ~~postage~~ ~~prepaid~~, to

  
\_\_\_\_\_  
James Bradford Ramsay  
Deputy Assistant General Counsel

National Association of  
Regulatory Utility Commissioners

December 15, 1994